

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GARY APPLE,

Plaintiff,

NOTICE OF REMOVAL

-against-

1:23-cv-1303

THE DEPARTMENT OF EDUCATION OF THE CITY
OF NEW YORK,

Defendant.

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**TO: THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK**

PLEASE TAKE NOTICE that Defendant, the Department of Education of the City of New York (“DOE”), by and through its attorney, Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, hereby removes the New York State Supreme Court action currently pending in Kings County, as *Gary Apple v. The Department of Education of the City of New York*, Index No. 501944/2023 (Sup. Ct. Kings Cnty.)(“the State Court Action”), pursuant to 28 U.S.C. §§ 1441, 1446 and Fed. R. Civ. P. 81(c).

1. On January 19, 2023, Defendant DOE received a copy of the Summons and Complaint when it was delivered to the Office of the Corporation Counsel in the State Court Action.

2. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons and Complaint in the State Court Action is annexed hereto as Exhibit “A.”

3. The Complaint alleges that Defendant violated the Individuals with Disabilities Education Act (“IDEA”) 20 U.S.C. § 1400, *et seq* and the regulations promulgated pursuant to IDEA in addition to citing N.Y. Education Law § 4401, *et seq*. *See* Complaint, Exhibit A.

4. The Complaint does not set forth any causes of action but the references throughout are to the IDEA, its implementing regulations and federal case law. There are only two references in passing in the Complaint to the N.Y. Education Law.

5. The above-captioned action is a civil action of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331, in that it alleges claims which arise under the laws of the United States. This action is therefore removable to this Court, without regard to the citizenship or residence of the parties, pursuant to 28 U.S.C. § 1441.

6. The above-captioned action is a civil action of which this Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367, in that it alleges state law claims so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

7. This Notice of Removal is timely because it is being filed within thirty days of the DOE’s receipt of the Summons and Complaint. *See* 28 U.S.C. § 1446(b).

8. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly provide Plaintiff with written notice of the filing of this Notice of Removal, and shall file a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Kings.

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WHEREFORE, the DOE respectfully requests that the above-captioned action be removed from the Supreme Court of the State of New York, County of Kings, to the United States District Court for the Eastern District of New York.

Dated: New York, New York
February 17, 2023

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/s/ Marilyn Richter

Marilyn Richter
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